**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID MAGERMAN,	)	
Plaintiff,	)	Civil Action No.
v.	)	
	)	JURY TRIAL DEMANDED
ROBERT MERCER,	)	
Defendant.	)	

COMPLAINT

Plaintiff, David Magerman, by and through his undersigned counsel, hereby asserts the following claims against Defendant Robert Mercer.

THE PARTIES

1. Plaintiff, David Magerman, is a resident of the Commonwealth of Pennsylvania residing at 117 Raynham Road, Merion Station, Pennsylvania 19066.

2. Defendant, Robert Mercer, is a resident of the State of New York residing at 149 Harbor Road, Saint James, New York 11780.

JURISDICTION AND VENUE

3. This Court has personal jurisdiction over Mercer because Mercer purposefully directed his activities at Pennsylvania, the litigation arises out of those activities, and the exercise of personal jurisdiction comports with fair play and substantial justice.

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1367 because the action arises under the laws of the United States and all other claims are so related to the claim in the action within the Court's original jurisdiction that they form part of the same case or controversy. This Court also has subject matter jurisdiction pursuant to 28 U.S.C. § 1332

because the action is between citizens of different states and the amount in controversy is in excess of $75,000.00, exclusive of interests and costs.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this District.

FACTUAL BACKGROUND

Overview of Magerman's Work at Renaissance

6. Magerman was formerly an employee of Renaissance Technologies L.L.C. ("Renaissance"), an investment management company trading in global financial markets and based in East Setauket, New York and New York City.

7. Although Renaissance is based in New York, Magerman worked primarily from his home in Pennsylvania.

8. Mercer is Renaissance's co-Chief Executive Officer.

9. Magerman had been employed by Renaissance for approximately the last 22 years with the exception of one two-year hiatus from the company. Magerman's most recent employment with Renaissance began on or about 2010 and was governed by an employment agreement revised in January 2015 (the "Employment Agreement"). A copy of the Employment Agreement is attached hereto as Exhibit A.

10. Renaissance also had an employee handbook and policy manual (the "Handbook") that Renaissance claims governs employee conduct.

11. The Handbook provides, among other things, that an employee cannot publicly disparage Renaissance or any of its employees.

12. Magerman was a research scientist at Renaissance who designed mathematical and statistical algorithms to direct Renaissance's investment decisions on the international financial markets.

13. The algorithms written by Magerman have been used by Renaissance to earn billions of dollars in revenue and have helped to make Mercer one of the wealthiest people in the United States.

14. Renaissance and Mercer recognized the value that Magerman contributed to the company, paying him a salary and bonuses worth millions of dollars annually.

Magerman's Conversations with Mercer

15. Mercer has long been a public supporter of conservative political causes and candidates, including then-candidate Donald Trump during the 2016 presidential general election.

16. Mercer and his daughter were influential advisors to the Trump campaign, recommending the hiring of two Mercer family associates, Stephen K. Bannon and Kellyanne Conway.

17. Bannon became the Chief Executive Officer of the Trump campaign and is now White House Chief Strategist. Conway became the Campaign Manager of the Trump campaign and is now Counselor to the President.

18. Mercer is also a major investor in Breitbart News, an alt-right media organization that Bannon used to lead.

19. On January 16, 2017, Magerman called Mercer and asked if he had time for a personal conversation regarding Mercer's support for President Trump.

20. The two discussed issues such as the Affordable Care Act and the social safety net, with Mercer expressing support for the Trump administration's positions on these issues and Magerman expressing opposition.

21. Mercer then made a series of racist comments, saying things such as:

a) The United States began to go in the wrong direction after the passage of the Civil Rights Act in the 1960s;

b) African Americans were doing fine in the late-1950s and early-1960s before the Civil Rights Act;

c) The Civil Rights Act "infantilized" African Americans by making them dependent on government and removing any incentive to work;

d) The only racist people remaining in the United States are black; and

e) White people have no racial animus toward African Americans anymore, and if there is any, it is not something that the government should be concerned with.

22. Magerman was stunned by these comments and pushed back, pointing out that society was segregated before the Civil Rights Act and African Americans were required to use separate and inferior schools, water fountains, and other everyday services and items.

23. Mercer responded that those issues were not important.

24. Magerman reported the conversation to Peter Brown, Mercer's co-Chief Executive Officer at Renaissance, who expressed disbelief that Mercer would make comments like those and asked if Magerman would be willing to talk to Mercer again. Magerman agreed.

25. On February 5, 2017, Mercer called Magerman and stated, in a threatening manner, "I hear you're going around saying I'm a white supremacist."

26. Magerman told Mercer that that is not what Magerman had said, but then quoted back to Mercer the comments about African Americans that Mercer had made in their prior conversation.

27. At first, Mercer disputed that he had said such things, although he did not actually deny saying them.

28. In the course of rehashing the conversation, however, Mercer repeated many of these same views, and even cited research that allegedly supported his opinion that the Civil Rights Act harmed African Americans economically.

29. Magerman was skeptical of the supposed data that Mercer relied on, but nonetheless pointed out that, even if it was true, there is more to someone's well-being than money, and segregation was still degrading and destructive and the United States was right to get rid of it.

30. Mercer scoffed at this suggestion.

Magerman Speaks to the Press About Mercer's Political Views

31. Magerman continued to be alarmed by his boss's personal views and backing of policies and statements Magerman found to be divisive and harmful to the poor.

32. Magerman was also concerned that Renaissance did not employ any African Americans in high-level positions.

33. Magerman felt obligated to speak out against these policies and the support that some Renaissance employees had for them.

34. Magerman, however, was aware of alleged restrictions under the Employment Agreement and Handbook to avoid publicly disparaging either Renaissance or its employees, even though such policies are illegal and unenforceable.

35. On January 29, 2017, before speaking publicly, Magerman sent a written memorandum to several Renaissance executives, including General Counsel Carla Porter, Chief

Compliance Officer Mark Silber and Director of Human Resources Lavonne Wesner. A copy of Magerman's January 29, 2017 memorandum, sent by email, is attached hereto as Exhibit B.

36. In that memorandum, Magerman stated, *inter alia*, "the Mercers' public and blatant support for the Trump candidacy, presidency and agenda has cast a taint on all Renaissance employees, including myself. To disallow employees to politely and honestly, but publicly, respond to this taint, and to prevent us from disavowing it in as public a forum as he has been allowed to promote it, is frankly unfair and untenable." (Ex. B.)

37. Magerman also sought guidance in writing as to what he would be allowed to say that would not subject him "to any retaliation in the workplace for my public speech." (*Id.*)

38. Magerman never received a written response to this email.

39. After sending the email, however, Magerman did consult telephonically with Silber, the Chief Compliance Officer, regarding Magerman's intention to speak to the press about his concerns.

40. Silber told Magerman that the statements Magerman was intending to make were permissible under company policy.

41. Magerman then gave an interview to a reporter for the *Wall Street Journal*, in which Magerman criticized President Trump and Mercer's support for the President's agenda.

42. After the interview, a representative of Renaissance called the reporter and threatened to cut him off from any further information from Renaissance if he published the article.

43. The Renaissance representative also made a number of false accusations about Magerman and downplayed the significance of Magerman's substantial contributions to the success and profitability of Renaissance.

44. Despite this effort to sabotage Magerman and silence his opinions, an article regarding the interview was published in the *Wall Street Journal* on February 23, 2017. A copy of this article is attached hereto as Exhibit C.

45. The following day, February 24, 2017, Magerman was suspended from Renaissance without pay.

46. Upon information and belief, Magerman's suspension was ordered personally by Mercer and was in retaliation for Magerman's criticisms of Mercer's political activities and the causes he supports.

47. Media stories about the *Wall Street Journal* article and Magerman's ensuing suspension were subsequently published in several other new sources, including the *Philadelphia Inquirer*, Philly.com and Dealbreaker.com.

48. Magerman and Renaissance attempted to work out a resolution of Magerman's suspension that would allow Magerman to return to work without compromising his right to free speech, but were unable to do so.

49. On or around March 30, 2017, Renaissance paid Magerman the compensation that it had withheld but *de facto* continued the suspension by locking Magerman out of the company's computers, isolating him from his colleagues and otherwise denying him the right to return to work.

50. On or around April 20, 2017, Magerman attended a charity poker tournament in New York City attended by many Renaissance employees, including Mercer and his daughter.

51. At the tournament, Mercer's daughter confronted Magerman, calling him "pond scum" and saying that "[k]arma is a bitch." An April 29, 2017 article from the *Wall Street Journal* describing this altercation is attached hereto as Exhibit D.

52. Renaissance, at the direction of Mercer and in further retaliation for Magerman's criticisms of Mercer's political activities and the causes he supports, fired Magerman as of April 29, 2017, in a letter Magerman received on May 3, 2017.

COUNT I
Violation of 42 U.S.C. § 1981

53. Magerman incorporates by reference the foregoing paragraphs as if set forth at length herein.

54. Magerman, by reporting Mercer's racist comments to Brown and exercising his right to free speech to criticize what he believes are hateful statements and policies from President Trump and Mercer's support thereof, engaged in protected activity.

55. Mercer, as co-Chief Executive Officer of Renaissance, took an adverse employment action against Magerman by suspending and then firing him.

56. Magerman's protected activity – reporting Mercer's racist comments to a superior and speaking out against Mercer's support for President Trump's prejudiced policies – was the direct and proximate cause of the adverse employment action taken by Mercer.

57. Mercer has therefore violated Magerman's civil rights by firing him for engaging in protected activity. Mercer's conduct is an outrageous attempt to deny Magerman his constitutional and federal statutory rights.

58. As a direct and proximate result of this adverse employment action and Mercer's violation of Magerman's civil rights, Magerman has incurred and continues to incur significant damages in the form of lost wages and emotional and physical distress.

WHEREFORE, Plaintiff, David Magerman, demands judgment be entered in his favor and against Defendant, Robert Mercer, and prays that this Court enter an Order granting the following relief:

1. Compensatory damages in excess of $150,000.00;

2. Expectation damages and consequential damages to be determined at trial;

3. Attorneys' fees and costs pursuant to 42 U.S.C. § 1988;

4. Punitive damages; and

5. Such other relief that the Court deems appropriate.

COUNT II
Wrongful Discharge

59. Magerman incorporates by reference the foregoing paragraphs as if set forth at length herein.

60. Under the Employment Agreement, Magerman was an employee at will at Renaissance. (Ex. A, ¶ 2.)

61. Mercer attempted to silence Magerman and prevent him from speaking out on political issues, even after Magerman received permission from Renaissance's Chief Compliance Officer to make the public statements attributed to him.

62. Mercer's actions are tantamount to forced political speech because, by insisting that Magerman remain publicly silent about political issues, Mercer is forcing Magerman to tacitly support, or at least condone, Mercer's publicly announced and very visible political views. *See, e.g.*, Exhibit E.

63. Mercer's decision to suspend and subsequently fire Magerman violates a clear mandate of public policy against forced political speech and conditioning employment on political subordination.

64. Mercer therefore wrongfully discharged Magerman under Pennsylvania law.

65. As a direct and proximate result of Mercer's wrongful discharge of Magerman, Magerman incurred and continues to incur significant damages in the form of lost wages and emotional and physical distress.

WHEREFORE, Plaintiff, David Magerman, demands judgment be entered in his favor and against Defendant, Robert Mercer, and prays that this Court enter an Order granting the following relief:

1. Compensatory damages in excess of $150,000.00;
2. Expectation damages and consequential damages to be determined at trial;
3. Attorneys' fees and costs;
4. Punitive damages; and
5. Such other relief that the Court deems appropriate.

Respectfully submitted,

COZEN O'CONNOR

Date: May 5, 2017

By: ______________________

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